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EXAMINER	
COLBERT, ELLA	

ART UNIT	PAPER NUMBER
3624	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/650,482	STEEN ET AL.	
	Examiner	Art Unit	
	Ella Colbert	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Office Action

1. Claims 1-27 are pending in this communication filed 09/13/04 entered as Response to Office Action.

Claim Rejections - 35 USC § 103

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> *(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,737,539) Edelson et al, hereafter Edelson in view of (US 5,924,074) Evans.

With respect to claim 1, Edelson teaches, A pharmaceutical administrative system comprising: a pharmacy network including a pharmacy server and at least one pharmacy client system, the at least one pharmacy client system configured to accept and process orders for medications (col. 7, lines 16-27); and a service center network including a service center server and a service center client system, the service center network coupled to the pharmacy network and configured with a global database including a plurality of formulary records (col. 7, lines 28-32).

Edelson failed to teach, wherein the service center server supplies the pharmacy server at least one of the plurality of formulary records upon request by a pharmacy client system when a order is processed.

Evans teaches, wherein the service center server supplies the pharmacy server at least one of the plurality of formulary records upon request by a pharmacy client system when a order is processed (col. 11, lines 65-67, col. 12, lines 1-15 and lines 56-67, col. 13, lines 1-30, and fig. 24 (406, 408, 410, 414, 416, 418, 430, 432, & 434). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a service center server that supplies the pharmacy server with at least one of the plurality of formulary records upon request by a pharmacy client system when a order is processed and to modify in Edelson because such a modification would allow Edelson to allow a healthcare provider to have easy access to the medication records of the patient.

4. Claims 2-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,737,539) Edelson et al, hereafter Edelson in view of (US 5,845,255) Mayaud.

With respect to claim 2, Edelson teaches, wherein the global database further includes a plurality of order records, each order record including order information for an order accepted and processed by the at least one pharmacy client system (col. 10, lines 5-67 and col. 11, lines 1-4).

With respect to claim 3, Edelson teaches, wherein the global database further includes a plurality of customer records, each customer record including contact and

formulary information for at least one customer (col. 14, lines 53-67 and col. 15, lines 1-6).

With respect to claim 4, Edelson teaches, wherein the global database further includes a plurality of patient records, each patient record including contact information and medication history for at least one patient (col. 16, lines 10-35 and col. 19, lines 1-67).

With respect to claim 5, Edelson failed to teach, wherein the pharmacy client system is further configured to generate medication specific label containing medication identification information. Mayaud teaches, wherein the pharmacy client system is further configured to generate medication specific label containing medication identification information (col. 28, lines 50-67, col. 29, lines 1-65, and fig. 15 (182, 184, 186, & 188). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pharmacy client system further configured to generate medication specific label containing medication identification information and to modify in Edelson because such a modification would allow Edelson to have the information on the dispensed drugs of a multi-drug prescription into a novel package which has multiple labeled or coded compartments for each of a number of dosing intervals.

With respect to claim 6, Edelson failed to teach, wherein the pharmacy client system is configured to provide updates to the patient, customer, and formulary records in the global database. Mayaud teaches, wherein the pharmacy client system is configured to provide updates to the patient, customer, and formulary records in the

global database (col. 31, lines 50-67 and col. 32, lines 1-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pharmacy client system configured to provide updates to the patient, customer, and formulary records in the global database and to modify in Edelson because such a modification would allow Edelson to have the prescription creation process, relevant to remote source databases (which may be proprietary) that are updated with appropriate components of the new information and such updates effected with proper controls to ensure data integrity.

With respect to claim 7, Edelson failed to teach, wherein updates to the formulary records include modification to the ingredients of the medication. Mayaud teaches, wherein updates to the formulary records include modification to the ingredients of the medication (col. 36, lines 1-9, col. 35, lines 44-67, and fig. 11 (128 & 130). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have updates to the formulary records include modification to the ingredients of the medication and to modify in Edelson because such a modification would allow Edelson to have formulary information called across a data-retrieval network, each time it is required, from a remote source database the updates are automatically posted across the network.

With respect to claim 8, Edelson and Mayaud failed to teach, wherein updates to the modification to the ingredients of the medication include changes to amounts of caloric content in the medication. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to

have the modifications to the ingredients of the medication include modifications to electrolytes in the medication because such a modification in Edelson would allow Edelson to have substances that dissociate into two or more ions, to some extent, in water.

With respect to claim 9, this dependent claim is rejected for the similar rationale given above for claim 8.

With respect to claim 10, Edelson failed to teach, wherein the pharmacy client system is configured to verify the updates to the formulary records in the global database. Mayaud teaches, wherein the pharmacy client system is configured to verify the updates to the formulary records in the global database (col. 6, lines 59-67 and col. 7, lines 1-2 and lines 30-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pharmacy client system is configured to verify the updates to the formulary records in the global database and to modify in Edelson because such a modification would allow Edelson to have a remote database for providing useful information elements to the system.

With respect to claim 11, Edelson and Mayaud failed to teach, wherein the medication specific label is for an intravenous solution and the medication identification information includes a refractive index associated with the intravenous solution. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the medication specific labels for the medication include information about a refractive index of the intravenous solution and to modify in Edelson because such a modification would allow Edelson to have the

information regarding the refractive index since the refractive index increases with the atomic number of constituent atoms in the intravenous solution.

With respect to claim 12, Edelson and Mayaud failed to teach, wherein the medication specific label is for an intravenous solution and the medication identification information includes a level of potassium associated with the intravenous solution. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the medication specific label for an intravenous solution and the medication identification information to include a level of potassium associated with the intravenous solution and to modify in Edelson because such a modification would allow Edelson to use an intravenous solution for medical conditions such as dehydration to put the electrolytes back into a person's body.

With respect to claim 13, Edelson and Mayaud failed to teach, wherein the pharmacy client system is configured to generate a calcium phosphate solubility curve for an order accepted and processed by the at least one pharmacy client. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pharmaceutical system wherein the pharmacy client system is configured to generate a calcium phosphate solubility curve for the an order accepted and processed by the at least one pharmacy client and to modify in Edelson because such a modification would provide a time release of the compounds of calcium salts of phosphoric acid which are frequently used as calcium supplements.

With respect to claim 14, Edelson failed to teach, further comprising a backup network including a backup server, the service center server replicating records of orders for medication and providing the records replicated to the backup server, the backup server storing the records replicated in a backup database and providing access to the backup database by the pharmacy network when the service center network is not available for a predetermined amount of time. Mayaud teaches, further comprising a backup network including a backup server, the service center server replicating records of orders for medication and providing the records replicated to the backup server, the backup server storing the records replicated in a backup database and providing access to the backup database by the pharmacy network when the service center network is not available for a predetermined amount of time (col. 17, lines 44-52, col. 46, lines 16-31, and fig. 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further comprise a backup network including a backup server, the service center server replicating records of orders for medication and providing the records replicated to the backup server, the backup server storing the records replicated in a backup database and providing access to the backup database by the pharmacy network when the service center network is not available for a predetermined amount of time and to modify in Edelson because such a modification would allow Edelson to have a server system where the file server or database management server manages the data storage over a local area network.

With respect to claim 15, Edelson failed to teach, wherein the pharmacy server is configured with a local database containing a subset of formulary records of the plurality

of formulary records in the global database that specifically pertains to the pharmacy network. Mayaud teaches, wherein the pharmacy server is configured with a local database containing a subset of formulary records of the plurality of formulary records in the global database that specifically pertains to the pharmacy network (col. 1, lines 46-67, col. 2, lines 1-11, and col. 6, lines 59-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pharmacy server configured with a local database containing a subset of formulary records of the plurality of formulary records in the global database that specifically pertains to the pharmacy network and to modify in Edelson because such a modification would allow Edelson to have preferred drugs that vary in content and usually determinative of the cost effectiveness of a prescription in a database.

5. Claims 16-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,758,095) Albaum et al, hereafter Albaum in view of (US 5,737,539) Edelson et al, hereafter Edelson.

With respect to claim 16, Albaum teaches, wherein the pharmacy client system comprises: an order maintenance unit configured to create an order for medication for at least one customer and at least one patient (col. 3, lines 3-20); a formulary unit coupled to the order maintenance and presenting information about the medication to the order maintenance unit (col. 3, lines 21-47); a customer unit coupled to the order maintenance unit and presenting information relating to contact and purchasing information for the at least one customer ordering the medication (col. 7, lines 7-24); and a patient unit coupled to the order maintenance unit and the customer unit and presenting information

relating to contact and medical information for the at least one patient (col. 10, lines 18-43). Albaum failed to teach, wherein the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication. Edelson teaches, wherein the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication (col. 12, lines 42-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication and to modify in Albaum because such a modification would allow Albaum to have a system that is effectively cognizant of the ongoing prescribing activity.

Albaum teaches, wherein the pharmacy client system comprises: an order maintenance unit configured to create an order for medication for at least one customer and at least one patient (col. 3, lines 3-30); a formulary unit coupled to the order maintenance and presenting information about the medication to the order maintenance unit (col. 3, lines 21-47); a customer unit coupled to the order maintenance unit and presenting information relating to contact and purchasing information for the at least one customer ordering the medication (col. 7, lines 7-24 and col. 10, lines 18-32); and a patient unit coupled to the order maintenance unit and the customer unit and presenting information relating to contact and medical information for the at least one patient (col. 10, lines 33-43); wherein the order maintenance unit is configured to modify the

ingredients of the medication and to validate the modifications to the ingredients of the medication (col. 10, lines 44-67).

With respect to claim 17, Albaum teaches, wherein the medication is an intravenous solution (col. 11, lines 60-67 and col. 12, lines 1-3).

With respect to claim 18, Albaum and Edelson failed to teach, wherein the order maintenance unit is configured to validate the modifications to the ingredients by generating a calcium phosphate solubility curve for the medication. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the order maintenance unit configured to validate the modifications to the ingredients by generating a calcium phosphate solubility curve for the medication and to modify in Albaum because such a modification would provide a time release of the compounds of calcium salts of phosphoric acid which are frequently used as calcium supplements.

With respect to claim 19, this dependent claim is rejected for the similar rationale given above for claim 18.

With respect to claim 20, this dependent claim is rejected for the similar rationale given above for claims 18 and 19.

With respect to claim 21, Albaum and Edelson failed to teach, wherein the order maintenance unit is configured to generate medication specific labels for the medication. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the order maintenance unit configured to generate medication specific labels for the medication

and to modify in Albaum because such a modification would allow Albaum to have a prescription delivery system to generate the invoice and label and other documentation prior to delivering the medication to the patient.

With respect to claim 22, Albaum and Edelson failed to teach, wherein the medication specific labels for the medication includes information about a refractive index of the intravenous solution. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the medication specific labels for the medication include information about a refractive index of the intravenous solution and to modify in Albaum because such a modification would allow Albaum to have the information regarding the refractive index since the refractive index increases with the atomic number of constituent atoms in the in the intravenous solution.

With respect to claim 23, Albaum and Edelson failed to teach, wherein the medication specific labels for the medication includes information about a level of potassium in the intravenous solution calculated using flame photometry. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the medication specific labels for the medication include information about a level of potassium in the intravenous solution calculated using flame photometry and to modify in Albaum because such a modification would allow Albaum to have a major intracellular action that is widely distributed in the body in muscle tissue, nerve tissue, blood cells, and plasma which is filtered in the glomerulus, absorbed in the proximal tubule and finally excreted by exchange for sodium in the

distal tubule. The reliability depends on the proper maintenance of the flame photometer and the salient features. If low serum potassium values are observed due to low intake of dietary potassium over a period of time or increased loss through kidney, vomiting or diarrhea and increased secretion of adrenal steroids or some diuretics that promote the loss of potassium a flame photometer (digital flame photometer) for simultaneous measurement is useful in these medical conditions.

With respect to claim 24, Albaum teaches, the pharmacy client system of claim 23 wherein the modifications to the ingredients of the medication includes modifications to caloric content of the medication (col. 10, lines 17-43).

With respect to claim 25, this dependent claim is rejected for the similar rationale given above for claim 24.

With respect to claim 26, Albaum and Edelson failed to teach, wherein the modifications to the ingredients of the medication includes modifications to electrolytes in the medication. Official Notice is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the modifications to the ingredients of the medication include modifications to electrolytes in the medication because such a modification in Albaum would allow Albaum to have substances that dissociate into two or more ions, to some extent, in water.

With respect to claim 27, this dependent claim is rejected for the similar rationale as given above for claim 26.

Response to Arguments

6. Applicants' arguments filed 09/13/04 have been fully considered but they are not persuasive. The arguments addressed below are considered the Applicants' relevant arguments according to the Examiner.

Issue no. 1: Applicants' argue: the present Office action, though does not address most of the arguments presented in the First Response and in the present Office action, the Examiner does include a section titled "Response to Arguments". However, this section only specifically addresses Applicants' arguments regarding claims 8, 9, and 11-13 (and by implication similar rejections to claims 18-23 and 26-27) and for most of the claims, including claim 1, Applicants' find no new grounds of rejection stated in the present Office action and accordingly, reconsideration of these arguments and a new action addressing these arguments is respectfully requested has been considered but is not persuasive. Response: The Examiner addressed the Applicants' arguments in the most reasonable and concise manner considering the content of the arguments.

Issue no. 2: Applicants' argue: in the first response, with respect to claim 1, Applicants' argued, "Evans does not describe or suggest supplying a formulary record or a service center server supplying the pharmacy server a formulary record 'upon request by a pharmacy client system when an order is processed' provided for in claim 1." Applicants' further argued that the Examiner did not make out a *prima facie* showing of obviousness because Evans and Edelson both disclose complete solutions that would not have any need or motivation to be combined with each other or any other

system and that there is not teaching or suggestion as to how these systems of these two references could even be combined to arrive at the claimed invention and these arguments were not addressed at all in the present Office action has been considered but not fully persuasive. Response: The argument for claim 1 was overlooked in error. This argument will now be addressed. In response to Applicants' argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is interpreted that Evans teaches this limitation. It is well known in the computer and network art that by definition a server is a computer that provides services to another computer (called a client. Evans shows in fig. 24 (406, 408, 410, 430, 432, & 434) servers that can be used to supply a formulary record upon request by a client (customer or medical personal). It is interpreted that Evans further shows a formulary record in fig. 7.

Issue no. 2: Applicants' argue: Thus, with respect to claim 1, the "new grounds of rejection" are truly identical to the grounds for rejection in the First Office Action and thus Applicants' arguments in the First Response regarding claim 1 are not "moot" as they have not yet been addressed by the Examiner at all has been considered but is not persuasive. Response: The Examiner, though may give the same rejection, and

choose to address the arguments that the Examiner considers applicable. The argument regarding claim 1 is addressed in issue no. 1 above which the Examiner considers to satisfy the alleged unaddressed argument.

Issue no. 3: Applicants' argue: The Examiner may have intended to replace the rejection based on Mayaud and Evans with a rejection based on Edelson, but this is speculation on Applicants' part and even if the Examiner intended to reject claims 2-15 based on Edelson, this rejection appears to be the same as the rejection in the First Office Action because Edelson and Mayaud have the same disclosure as discussed above and thus, the "new" rejection does not moot or address Applicants' arguments in their First Response with respect to claims 2-15. In particular, the Examiner does not address Applicants' Specific arguments in the First Response that the elements in claims 6, 7, 10, 14, and 15 are disclosed in Mayaud as asserted by the Examiner in the First Office Action and merely changing the citation of where these elements are supposedly found from Mayaud to Edelson, when Mayaud and Edelson have identical disclosures does not address Applicants' arguments has been considered but the arguments are not persuasive. Response: The Examiner disagrees with this argument because beginning at col. 7, line 7 Edelson differs from Mayaud in the "Detailed Description of the Preferred Embodiments Overview". Therefore, it is proper to state that the arguments are moot in view of the new grounds of rejection even though one of the inventors is the same and the assignee is the same. The Edelson and Mayaud reference (US 5,737,539) certainly discusses more than the Mayaud reference (US 5,845,255).

Issue no. 4: Applicants argue: Thus, in addition to the reasons set forth in the First Response, the rejection of claim 16 (and claims 17-27 dependent thereon) are improper as the examiner has not even alleged that it would have been obvious to combine the combination of Albaum and Edelson and Official Notice (claim 16 rejection) with the combination of Edelson or Mayaud in view of Evans (claim 1 rejections), not to mention the corresponding lack of showing of any motivation or suggestion for such combination has been considered but is not persuasive. Response: claim 16, Albaum teaches, wherein the pharmacy client system comprises: an order maintenance unit configured to create an order for medication for at least one customer and at least one patient (col. 3, lines 3-20); a formulary unit coupled to the order maintenance and presenting information about the medication to the order maintenance unit (col. 3, lines 21-47); a customer unit coupled to the order maintenance unit and presenting information relating to contact and purchasing information for the at least one customer ordering the medication (col. 7, lines 7-24); and a patient unit coupled to the order maintenance unit and the customer unit and presenting information relating to contact and medical information for the at least one patient (col. 10, lines 18-43). Albaum failed to teach, wherein the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication. Edelson teaches, wherein the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication (col. 12, lines 42-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the order maintenance unit is

configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication and to modify in Albaum because such a modification would allow Albaum to have a system that is effectively cognizant of the ongoing prescribing activity. Albaum teaches, wherein the pharmacy client system comprises: an order maintenance unit configured to create an order for medication for at least one customer and at least one patient (col. 3, lines 3-30); a formulary unit coupled to the order maintenance and presenting information about the medication to the order maintenance unit (col. 3, lines 21-47); a customer unit coupled to the order maintenance unit and presenting information relating to contact and purchasing information for the at least one customer ordering the medication (col. 7, lines 7-24 and col. 10, lines 18-32); and a patient unit coupled to the order maintenance unit and the customer unit and presenting information relating to contact and medical information for the at least one patient (col. 10, lines 33-43); wherein the order maintenance unit is configured to modify the ingredients of the medication and to validate the modifications to the ingredients of the medication (col. 10, lines 44-67). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is interpreted that Edelson teaches, a network, a server, and

a client system (the network can be used as a pharmacy network, the server can be used as a pharmacy server, and the system can be considered a client system), the system can be configured to accept and process orders for medications, the system has a global database since the database is in a network environment; Evans teaches, servers, records, a client system capable of processing an order; Mayaud teaches a client system for providing updates to a patient (customer) and records in a database; and Albaum teaches an order maintenance unit, creating an order for medication, information about the medication, a customer unit relating to contact and purchasing information for ordering in col. 7, lines 7-24 and col. 10, lines 18-32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Edelson's network, server, and client system with Evans servers, records, and client system capable of processing an order and Mayaud's client system for providing updates to a patient (customer) and records database with Albaum's order maintenance unit, order creation for the medication and a customer unit relating to contact and purchasing information for ordering because such a combination would result in an online pharmacy system for ordering medication and a database for maintaining records of the customer along with the ingredients of the medication.

Issue no. 5: Applicants' argue Official Notice and Motivation/Suggestion - With respect to dependent claims 8, 9, 11-13, 18-23, 26, and 27, Applicants' refuted the Examiner's reliance on Official Notice that it would be obvious to modify the cited referenced with the claimed elements as improper under both the MPEP and case law and it is important to note that Applicants' argument with respect to Examiner's use of

Official Notice is that the Examiner improperly uses Official Notice for both teachings of the claimed elements and the motivation to combine these teachings with the cited references has been considered but is not persuasive. Response: The Examiner disagrees that the use of Official Notice is being improperly used to modify the claimed elements according to the MPEP and case law. If Applicants' consider the Examiner to have improperly used Official Notice, the Applicants' are respectfully requested to distinctly point out how the Examiner improperly used Official Notice and the case law as evidence.

Issue no. 6: Applicants' argue: (Insufficient showings include: "[T]he demonstration mode is just a programmable feature which can be used in many different device[s} for providing automatic introduction by adding the proper programming software." "[A] nother motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial.") and the Examiner's only comments directed to any specific claims in which Official Notice was used were directed to claim 9. The Examiner stated, "[t]he evidence is in the On-Line Medical Dictionary reference listed in the prior art made of record in the Office Action of 09/10/03 [the First Office Action] which Applicants' are respectfully requested to read." Present Office action at 18 has been considered but is not found to be persuasive. Response: Applicants' are misinterpreting the taking of Official Notice. Official Notice is taken when something is considered to be old and well-known in the art by the skilled artisan.

Issue no. 7: Applicants' argue: Applicants' also note that Examiner does not even mention Applicants' Official Notice arguments made with respect to claims 18-23

and 27 and the citation to the On-Line Medical Dictionary in the First Office Action is to a definition of "electrolytes." With respect to claim 8, the Examiner has not made out a *prima facie* case of obviousness because she has not provided any evidence as to the relationship between properties of electrolytes in the cited dictionary definition and updates to formulary records that include modifications to caloric content in claim 8 and Applicants' fail to see the relevance of the definition of "electrolytes" to the Official Notice taken with respect to claims 11-13 and 18-23 which include elements that include subject matter other than electrolytes has been considered but is not fully persuasive. Response: The Dictionary definition is used to merely point out that the usage of electrolytes is well-known in the medical field and the private sector.

Issue no. 8: Applicants' argue: It is not known whether the Examiner is contending that support for the Official Notice taken with respect to the subject matter of each of claims 8, 11-13, 18-23, and 27 is found somewhere else in the On-Line Dictionary and if so, it is respectfully suggested that it is the Examiner's burden to point to which terms in the 46,000 term dictionary are relied upon for which claim in such official Notices (MPEP 2144.03.C) has been considered but fails to be persuasive. Response: Such a modification in Edelson for clarification purposes would allow Edelson to use the electrolytes in his prescription creation system for use by professional prescribers.

Issue no. 9: Applicants' argue: the Examiner's statement of the legal standards for the required motivation/suggestion to combine references in an obviousness rejection and the use of "common knowledge" as "evidence" is incorrect and the correct

legal standard was not applied in the present Office action has been considered but is not persuasive. Response: "Sources of Rational Supporting a Rejection Under 35 U.S.C. 103 - RATIONALE MAY BE IN A REFERENCE, OR REASONED FROM COMMON KNOWLEDGE IN THE ART, SCIENTIFIC PRINCIPALS, ART-RECOGNIZED EQUIVALENTS, OR LEGAL PRECEDENT". **MPEP 2144**. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992): *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); and *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

Conclusion: In this rejection of claim 1 and others, for example under Section 103 (a) of Title 35 of the United States Code, the Examiner carefully drew up a correspondence between the Applicants' claimed limitations and one or more referenced passages in the Edelson, Mayaud, Evans, and Albaum references, what is well known in the art, and what is known to one having ordinary skill in the art (the skilled artisan). The Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).<

Applicants' are respectfully requested to point out to the Examiner which claim limitation is considered to be the inventive concept because the inventive concept can not be determined from the claim limitations as written. In addition there appears to be a restriction based on species. Applicants' dependent claims seem to go in a different direction as though claiming another invention. First Applicants' claim a pharmaceutical administrative system in dependent claims 2-6, 10, 14-16, 20, and 21 and then claims modifying the ingredients of the medication and labeling the medication with specific labels in claims 8, 9, 11-13, 17-19, and 22-27.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E. Colbert
December 15, 2004